

BUREAU OF LABOR AND INDUSTRIES

OREGON FARM/FOREST LABOR CONTRACTOR HANDBOOK



2013 Edition

Wage and Hour Division
BUREAU OF LABOR AND INDUSTRIES
Brad Avakian, Commissioner

To Our Readers

This book is prepared as a general summary and teaching guide to help farm and forest labor contractors understand and comply with Oregon's Farm Labor Contractor, Farmworker Camp Operator, Wage and Hour and Child Labor regulations. The information in this book reflects legislative changes through the 2011 legislative session and administrative rules in effect as of January, 2012.* Appendices include applicable Oregon Revised Statutes and Oregon Administrative Rules along with sample forms and other useful information.

In addition to the Farm Labor Contractor Law, farm labor contractors must also understand and comply with state and federal wage and hour and civil rights regulations, and the federal Migrant and Seasonal Agricultural Protection Act (See following page for office listing). Companion publications "Wage and Hour Laws" and "Civil Rights Laws" are available from any Bureau of Labor and Industries (BOLI) office. (See following page for office listings.) Information regarding the Farm Labor Contractor, Wage and Hour, Child Labor and Civil Rights Laws is also available on BOLI's webpage at www.oregon.gov/boli.

Those with general questions about Oregon farm labor contractor, wage and hour or civil rights regulations may call or send a detailed written inquiry to the Oregon Bureau of Labor and Industries. Questions about federal laws, including compliance with the Migrant and Seasonal Agricultural Protection Act, should be addressed to the United States Department of Labor.

The information in this book is not intended as legal advice. Those wishing legal advice should contact an attorney and not rely on this guide.

The Farm/Forest Labor Contractor Handbook is also available in Spanish and is on BOLI's webpage at www.oregon.gov/boli.

*The Oregon Legislature is responsible for enacting the legislation (Oregon Revised Statutes) discussed in this Handbook. The commissioner of the Bureau of Labor and Industries has been given authority by the Legislature to adopt administrative rules (Oregon Administrative Rules) to carry out these laws.

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Who is a Farm/Forest Labor Contractor?

A farm/forest labor contractor is anyone who receives compensation for recruiting, soliciting, supplying, or employing workers to perform agricultural or reforestation work on land that the person does not own or lease. A person is acting as a farm/forest labor contractor even when the person does not directly employ the workers so long as the person is soliciting or supplying the workers to someone else for pay or profit. A person that engages in activities that meet the definition of a farm/forest contractor must be licensed by BOLI.

Oregon licensing law distinguishes between the activities of “**farm** labor contracting” and those of “**forest** labor contracting.”

A farm labor contractor generally is involved in obtaining labor for the production and/or harvesting of farm products on either private or public land, or the gathering of certain wild forest products from public lands. A farm labor contractor also includes a person who furnishes board or lodging in connection with obtaining labor for these purposes.

A forest labor contractor generally is involved in obtaining labor for the forestation or reforestation of land, but also includes obtaining labor for forest fire suppression by contract crews. A license may be obtained for farm labor contracting activities only, or with a forestation *indorsement* that permits both farm and forest labor contractor activities.

It is important to note that the mere act of submitting contract offers to supply labor or bidding on contracts to supply labor, whether for farm production/harvest purposes, or for the forestation/reforestation of land is a covered contractor activity which requires a license.

(ORS 658.405; 658.410)

Oregon law defines a “**Farm labor contractor**” as:

- Any person who, for an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another in the production or harvesting of farm products
- Any person who recruits, solicits, supplies or employs workers for an employer who is engaged in the production or harvesting of farm products
- Any person who recruits, solicits, supplies or employs workers to gather wild forest products
- Any person who furnishes board or lodging for workers in connection with the recruiting, soliciting, supplying or employing of workers to be engaged in the production or harvesting of farm products or in the gathering of wild forest products
- Any person who bids or submits contract offers for the production or harvesting of farm products or the gathering of wild forest products
- Any person who subcontracts with another for the production or harvesting of farm products or the gathering of wild forest products

Oregon law defines a “**Forest labor contractor**” as:

- Any person who, for an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another in the forestation or reforestation of lands
- Any person who recruits, solicits, supplies or employs workers for an employer who is engaged in the forestation or reforestation of lands
- Any person who furnishes board and lodging for workers in connection with the recruiting, soliciting, supplying or employing of workers to be engaged in the forestation or reforestation of lands
- Any person who bids or submits contract offers for the forestation or reforestation of lands
- Any person who subcontracts with another for the forestation or reforestation of lands

(ORS 658.405; OAR 839-015-0004)

A F/FLC includes:

Any person who bids or submits prices on contracts, or any person who for compensation, recruits or supplies workers for the production of farm crops or the reforestation of lands must apply for a farm and/or farm/forest labor contractor license. (ORS 658.410)

In addition, the *employees* of licensed farm/forest labor contractors who perform covered contracting activities must obtain an employee indorsement license. (ORS 658.411)

Farm labor contractors who operate a farmworker camp must also obtain a camp operator license indorsement. (ORS 658.715)

Exemptions Under the F/FLC Law

The following persons are not required to obtain a farm or forest labor contractor's license:

- A farmer or owner or lessee of land intended to be used for the production of timber dealing with workers or worker groups only concerning employment in their own operation
- A nursery owner or operator dealing with workers or worker groups only concerning employment in their own operations
- A processor of farm products dealing with workers or worker groups only concerning employment in their own farm operations
- A permanent employee of a farmer, nursery owner, or processor of farm products, or a permanent employee of an owner or lessee of land intended to be used for the production of timber so long as the employee is engaged solely in activities which would not require the employer to be licensed if the employer were performing the activity
- A person engaged only in the solicitation or recruitment of workers for agricultural day-haul work and not engaged in arranging for board or lodging for migrant workers and not performing as an employer of the workers
- A platoon leader
- A leader, or a leader's agent, of an organization operating as a labor union, provided that the only payment received from the workers is in the form of membership dues for which the workers are accorded membership status in the conduct of the affairs of the organization
- An employee of a farm or forest labor contractor except for any employee who:
 - (a) Recruits, solicits, supplies or employs workers on behalf of the farm or forest labor contractor; or
 - (b) For an agreed remuneration or rate of pay recruits, solicits, supplies or employs workers to perform labor for any other person in forestation or reforestation of lands or the production or harvesting of farm products; or
 - (c) Recruits, solicits, supplies or employs workers to gather wild forest products; or
 - (d) Furnishes board or lodging for such workers (but cooks employed by the contractor are not required to be licensed by reason of this sole activity); or
 - (e) On his or her own behalf bids or submits prices on contracts offers for those activities or enters into a subcontract with another for any of those activities.
- A crew leader provided that if the crew leader engages in any activity or receives any compensation with respect to any worker which exceed the permitted activities or compensation allowed by the definition in OAR 839-015-0004(7)(a) (see Appendix), the crew leader is not exempt with respect to any activities or workers.

Exemptions Under the F/FLC Law - continued

- A person who is primarily a supplier of on-farm equipment (sheep shearer, potato digger, or other farm machinery) or cottonwood tree harvesting machines unless the person also supplies temporary workers other than workers engaged in driving or maintaining the equipment
- The advertising media
- Employees of the Employment Department who are acting within the scope of their employment
- A person performing work of a mental, technical, professional or managerial nature as defined in OAR 839-015-0004(18) (see Appendix)
- An individual who performs work, other than recruiting, soliciting, supplying or employing workers to perform labor for another, or recruiting, soliciting, supplying or employing workers to gather wild forest products, alone or with only the assistance of the individual's spouse, son, daughter, brother, sister, mother or father
- Individuals who perform labor in connection with an agreement for the exchange of labor or services with each other, provided that the work is performed on land owned or leased by the individuals, and provided further that the labor or services involved are performed solely by said individuals, their immediate families, or their permanent employees.
- An educational institution which is recognized as such by the Oregon Department of Education.
- An individual who collects tree seed cones or an individual who buys tree seed cones from other individuals. (This exemption applies to *individuals* only and not to persons who are otherwise defined as farm or forest labor contractors.)
- Persons who recruit, solicit, supply or employ workers to perform labor under a contract or agreement solely for the following activities, provided that the person performs no other activities which would require licensing:
 - (a) Stream or creek debris removal;
 - (b) Provision of security services;
 - (c) Any activity which does not have the primary purpose of forestation or reforestation of lands, the gathering of wild forest products or of production or harvesting of farm products. Persons engaged in logging operations who would only otherwise be farm or forest labor contractors because they engage in reforestation activities that are incidental to contracts the primary purpose of which is the sale of timber, provided that they perform such incidental reforestation work using their own employees. (If the incidental reforestation activities are carried out using a subcontractor, the subcontractor is required to be licensed.)

(ORS 658.405; OAR 839-015-0130)

FREQUENTLY ASKED QUESTIONS

Does the F/FLC Law apply to temporary and leasing agencies?

Temporary and leasing agencies act as farm labor contractors and are required to be licensed when they recruit, solicit, supply or jointly employ workers to perform labor for another (or others) to work in covered activities. When a temporary or leasing agency provides workers or other covered services to another contractor, **both** the temporary/leasing agency **and** the contractor must be licensed.

Does the F/FLC law apply to firefighters?

Yes. A person recruiting, soliciting, or supplying firefighters for contract crews must have a license.

Does F/FLC law apply to logging activities?

No. Persons with logging contracts where the primary purpose is the sale of timber do not require a F/FLC license. Logging contractors who use their own employees to clean up logging slash and build fire trails when such activity is a part of a contract for the harvesting of logs are not subject to the provisions of the F/FLC law, so long as the other activities are incidental to the main activity of harvesting logs and only the employee of the logging contractor perform the incidental activities.

However, if the logging contractor subcontracts to another person any of the activities that fall under the definition of farm labor contractor (described in OAR 839-015-0004(8)) from the contractor's original contract to harvest logs, the contractor receiving the subcontract and performing the activity would require a F/FLC license.

Do I need a F/FLC license if I do not accept any form of compensation for the workers I supply to a farmer?

Yes, you still need a license. If you act as an agent of a farmer to recruit or supply workers and you are not a year-round full-time employee of the farmer, then you need a license.

Do I need a F/FLC license if I recruit or supply workers to a farmer but the farmer actually hires the workers and does the payroll?

Yes. It makes no difference whether you directly hire and pay the workers whom you recruit and supply to a farmer, or whether you merely recruit and supply workers to the farmer who then employs the workers. Under both situations you need a license.

Does the F/FLC law apply to my employee who helps me with my own contracting activity?

The definition of a farm labor contractor under Oregon Revised Statute 658.405 includes “any person... who recruits solicits, supplies or employs workers on behalf of an employer engaged in these activities.” Persons who engage in these activities are required to first obtain a Farm Labor Contractor’s License. In addition, ORS 658.411 requires *employees* of farm labor contractors who engage in these activities to also be licensed. Thus, if you have any of your own employees recruiting, soliciting, supplying, or employing other workers on your behalf, then such employees **must** first obtain a Farm or Farm/Forest Labor Contractor’s License with an employment indorsement.

To obtain an indorsement for your employee, the employee must complete a Farm/Forest Labor Contractor’s license application (WH-37) and submit it to the Bureau along with a Sponsorship Statement form (WH-36) from you indicating that you are sponsoring the employee under your own license. The employee must also take and pass the farm labor contractor written exam and meet all other conditions for obtaining a farm labor license except that the employee is not required to obtain a bond or workers’ compensation coverage. This is because you, the employer, have agreed by sponsoring the employee to be liable for your employee’s acts under your own bond and insurance coverage. By sponsoring the individual, you also agree to be jointly and severally liable for actions the sponsored employee takes under color of the employee’s indorsement.

I am a farmer. Do I need to comply with the F/FLC laws?

If you own or lease your land and hire workers to perform labor on only your own property then you do not need a F/FLC license. However, if you send your seasonal labor crew to a neighbor’s farm and require such workers to perform labor on your neighbor’s farm as a condition of employment with you, or you otherwise receive compensation from the other farmer, then you are acting as a farm labor contractor and you need a license.

Also, any farmer who knowingly uses the services of an unlicensed F/FLC is personally, jointly and severally liable with the person acting as an unlicensed contractor for any unpaid wages and other damages as provided by law, including costs and reasonable attorney fees in connection with any actions initiated to recover such amounts. (ORS 658.465; OAR 839-015-0605)

Must I have a F/FLC license if I perform farm or forest labor work by myself or only with family members?

An individual who performs work, *other than recruiting, supplying, soliciting or employing workers to perform labor for another*, alone or only with the assistance of the individual's spouse, son, daughter, brother, sister, mother, or father is not required to have a F/FLC license.

May my immediate family members perform work on my contract if I have an Exempt F/FLC license, which restricts the number of employees I may have to two or fewer (see page 9)?

Yes, however, family members must be counted as employees, and no more than two individuals may be employed by a F/FLC with an "Exempt" license, regardless of whether or not they are family members.

If I have an Exempt F/FLC license and one of my employees gets sick, may I replace that person?

Yes. F/FLCs who have an Exempt license may replace employees that quit or are unable to work so long as only two or fewer workers are employed at any one time.

As an Exempt F/FLC, am I allowed to have only one contract at a time?

No. You may have multiple contracts at the same time totaling more than \$25,000 so long as no single contract exceeds \$25,000 and you employ two or fewer individuals at any one time.

If I supply or employ workers to perform farm or forestation work outside of the state of Oregon do I still need to comply with all the Oregon farm/forest contractor laws and regulations?

Yes. So long as you are recruiting, soliciting, supplying or employing workers from the state of Oregon, then you need to comply with Oregon farm labor contractor laws and regulations no matter where the actual workplace is located, including filing wage certification forms in the case of forestation contractors.

License Types and Fees

Both **farm** and **forest** labor contractors are required to be licensed by BOLI under Oregon's Farm Labor Contractor Law. Contractors may be licensed as farm (only) labor contractors or, if the contractor conducts BOTH farm AND forest labor contracting activities or forest (only) labor contracting activities, a farm labor contractor license is issued with a forestation "indorsement," allowing the contractor to conduct both farm *and* forest labor contracting activities. (ORS 658.410; ORS 658.417; OAR 839-015-0004(3))

License Fees

Farm (only) Labor Contractor License - \$100.00
Farm/Forest Labor Contractor License - \$250.00
Farm (only) Employee Indorsement - \$100.00
Farm/Forest Employee Indorsement - \$250.00
Forest "Exempt" Contractor License* - \$250.00
Camp Operator Indorsement - \$50.00

*See page 9 for more information

Types of Entities Which May be Licensed as F/FLCs

Farm/Forest Labor Contractors licenses may be issued to the following types of contractor businesses:

- ∩ **Sole Proprietorship**
- ∩ **Partnership or Limited Liability Partnership** – Each partner must make application
- ∩ **Corporation** – The corporation **and** majority shareholder(s) must make application unless there are 10 or more shareholders and more than two shareholders collectively own the majority of the corporation
- ∩ **Limited Liability Company** – The LLC **and** majority of LLC members must make application unless the LLC has 10 or more members and more than two members collectively own the majority of the LLC
- ∩ **Cooperative Corporation**
- ∩ **Private Non-Profit Corporation**
- ∩ **Agricultural Association**
- ∩ **Publicly-Held Corporation (or Limited Liability Company)**
- ∩ **Employee(s) of Licensed Farm/Forest Labor Contractor** – Any person acting as a contractor, if different than a licensed sole proprietor, partner, shareholder, or LLC manager of member must be licensed

Assumed business names and corporations **MUST** be registered with the Corporation Division prior to a license being issued. (See Appendix for contact information.)

F/FLC Employee Indorsement Licenses

The employee of a licensed F/FLC may be licensed as a F/FLC with an employee indorsement if the employee continuously meets all of the following conditions:

- ∂ the employee's employer has filed a signed statement (WH-36) with BOLI agreeing to sponsor the application and to notify BOLI promptly upon the employee's termination
 - ∂ the employee engages in activities that would require a F/FLC license *only* on behalf of the sponsoring F/FLC employer
 - ∂ the employee does not personally employ any workers and is not responsible for paying workers
 - ∂ the sponsoring F/FLC employer maintains proof of financial responsibility
 - ∂ the sponsoring F/FLC employer's license remains in good standing
 - ∂ the employee meets all of the conditions required for licensing (with the exception of the proof of financial responsibility and provision of workers' compensation insurance coverage requirements)
- the employee is not otherwise licensed in any manner as a farm or forest labor contractor under these rules

A F/FLC who employs another contractor/employee is personally, jointly and severally liable for any damages, attorney fees or costs awarded against the employee for actions of the employee taken within the scope of the employee's employment or for actions of the employee taken in the course of the employee's contracting activities of which the employer contractor is aware or should have been aware.

(ORS 658.411)

"Exempt" Reforestation Licenses

Reforestation contractors who are sole proprietors, have no more than two employees, and bid only on contracts less than \$25,000 may apply for an "exempt" license. This license exempts the contractor from the proof of financial responsibility licensing requirements as well as certified payroll filing requirements under the F/FLC laws. Contractors applying for this type of license must submit an Application for Exemption from Financial Responsibility and Payroll Submission Requirements for Contractors Engaged in Reforestation Activities form (WH-56) with their license application. (See "Required Forms" in Appendix.) (ORS 658.418)

Temporary Permits

Once a first-time F/FLC license applicant has submitted a completed license application, the BOLI License Unit will issue a temporary permit to the contractor. Temporary permits are valid for 60 days and may not be extended. Only one temporary permit may be issued to a contractor in a 12-month period. After a temporary permit is issued, the contractor may lawfully act as a licensed contractor until the permit expires, is revoked by the agency, or a license is issued in its place. Before a F/FLC license can be issued to a new F/FLC license applicant, the applicant must take and pass an examination designed to test the applicant's ability, knowledge and proficiency to conduct and manage the business of a F/FLC. (See "License Examination, page 12) (ORS 658.425)

Expiration and Renewal of Licenses

F/FLC licenses expire one year following the date of issuance unless sooner revoked by the Commissioner of the Bureau of Labor and Industries. Renewal license applications are mailed to licensed F/FLCs by BOLI approximately two months prior to the expiration date of the license. Completed renewal applications and all required documents are required to be submitted by the applicant to BOLI no fewer than 30 days prior to the expiration date of the license. (ORS 658.435)

License renewal fees are the same as the fees for new licenses.

License Application Requirements

To obtain an F/FLC license, each applicant is required to submit the following:

- ∩ The appropriate license fee
- ∩ A completed license application (WH-37)*
- ∩ Four (4) current colored 2" X 2" passport photographs
- ∩ Certification of Internal Revenue Service (IRS) Compliance (WH-191)
- ∩ Certification of Oregon Department of Revenue (DOR) Tax Compliance (WH-192)
- ∩ Certification of Oregon Employment Department Tax Compliance (WH-193)
- ∩ A completed Vehicle Information Sheet (WH-150) if using vehicles to transport workers*
- ∩ A Certificate of Insurance issued by an auto insurance carrier listing BOLI as the certificate holder and providing a 30-day cancellation notice for all vehicles used to transport workers
- ∩ Copies of Forms WH-151 (Rights of Workers) and WH-153 (Agreement Between Contractor and Worker) or equivalents used in contracting business (for license *renewal* applicants)*
- ∩ A Certificate of Insurance issued by a Workers' Compensation carrier listing BOLI as the certificate holder and providing a 30-day cancellation notice
- ∩ Proof of Financial Responsibility
- ∩ A Certified Statement (WH-56) if applying for an "Exempt" Reforestation Contractor License (see page 6)
- ∩ A Sponsorship Statement (WH-36) for F/FLC *employee* indorsement license applicants
- ∩ A Certified Statement (WH-35) and proof of IRS 501(c)(3) exemption for private non-profit corporation F/FLC license applicants

Proof of financial responsibility and certificates of vehicle and workers' compensation insurance are not required for F/FLC employee indorsement license applicants.

*Forms also available in Spanish

License Examination

License applicants are required to schedule and take an exam within 45 days of being issued a temporary permit. Examinations may be scheduled and administered in any of the bureau's offices. Examinations are available in English, Spanish and Russian.

If an applicant desires to have an interpreter assist the applicant while taking the exam, BOLI will provide one upon request. (Only BOLI provided interpreters are permitted.)

The applicant must obtain a score of 75% in order to pass the exam. Applicants failing to pass an examination may request a review of their examination within 30 days. Applicants who fail an examination may retake the exam, but are required to wait the following periods of time between examinations:

First failure: 7 days*

Second failure: 14 days

Third failure: 30 days

Subsequent failures: 60 days

*Re-examinations may not be scheduled sooner than seven days after review of a failed examination.

(ORS 658.412; OAR 839-016-0170 – 839-016-0195)

Additional Licensing Requirements

To be eligible for a license, an applicant must:

- be of good character, competence and reliability
- not have had a F/FLC license application denied, revoked or suspended in Oregon or any other jurisdiction within the preceding three years
- not have persons financially interested in the applicant's business who have a F/FLC license denied, revoked or suspended in Oregon or any other jurisdiction within the preceding three years
- not have any unsatisfied final judgments or final orders requiring the payment of unpaid wages to employees or advances made to the contractor by farmers or owners/lessees of land

Proof of Financial Responsibility Requirements

Farm/forest labor contractor license applicants must provide proof of financial responsibility with their license applications. Proof of financial responsibility is a Corporate Surety Bond of a company licensed to do business in Oregon, a cash deposit, or deposit the equivalent of cash (such as a Time Certificate of Deposit). All financial responsibility documents are required to be submitted on forms provided by BOLI. The amount of proof of financial responsibility required is based on the maximum number of employees the farm/forest labor contractor expects to employ during the license year:

\$10,000 for 20 or fewer employees

\$30,000 for 21 or more employees and for agricultural associations (regardless of the number of employees employed or contemplated to be employed by the association)

(ORS 658.415)

Additional Amount Required for Farmworker Camp Operators

Farm/forest labor contractors who operate farmworker camps and are required to have a camp operator license indorsement must provide proof of financial responsibility for no less than \$15,000, regardless of the number of employees employed.

(ORS 658.735)

FREQUENTLY ASKED QUESTIONS

Must each applicant required to be licensed in a business entity obtain proof of financial responsibility?

If more than one person is required to be licensed in a business entity, such as in the case of a partnership or a corporation with more than one majority shareholder, each party must provide the applicable proof of financial responsibility the first year the business entity is licensed. After the entity has been licensed for at least one year, the parties may apply for a reduction in the amount of required aggregate bond or deposit. If the commissioner determines that the business has operated for at least one year without a valid claim against its bond or deposit, the commissioner may grant an application for a reduction in the aggregate amount of the required bond or deposit equal to amount that would be required for only one of the licensees/applicants. (ORS 658.415; OAR 839-015-0157)

Can the amount of bond/deposit required be reduced?

In addition to the aggregate bond reduction for more than one applicant/licensee in a business entity, farm and forest labor contractors who employ 21 or more employees and have been licensed for at least two consecutive years may apply for a reduction in the bond or deposit required. If the commissioner determines that the applicant has operated as a licensed contractor for at least two years in compliance with all laws pertaining to the operation of the contractor's business, and no valid claims for unpaid wages have been made against the applicant, the amount of bond or deposit may be reduced as follows:

After two years:	\$27,500
After three years	\$25,000
After four years	\$22,500
After five years	\$20,000

There is no bond reduction available for contractors with 20 or fewer employees.

Duties of Farm Labor Contractors

Prior to beginning work on any contract, F/FLCs are required to display *and* provide a copy of the contractor's license or temporary permit to the person to whom workers are being provided (or the person's agent).

F/FLCs are also required to:

- ∞ carry their license at all times and exhibit it upon request to any person with whom the contractor intends to deal in their capacity as a F/FLC
- ∞ immediately file with the U.S. post office notice of any change of address if the address change is permanent, and notify BOLI each time an address change is made
- ∞ promptly pay or distribute all money or things of value to entitled individuals for which the F/FLC has been entrusted
- ∞ comply with the terms and provisions of all legal and valid agreements or contracts entered into in the contractor's capacity as a F/FLC
- ∞ file information relating to work agreements between the F/FLC and farmers (if applicable) and between the F/FLC and workers with BOLI as required
- ∞ notify BOLI of any changes in the circumstances under which the F/FLC's license was issued
- ∞ furnish to each worker at the time of hiring, recruiting, soliciting or supplying, whichever occurs first, a written summary of the terms and conditions of employment in English and any other language used by the F/FLC to communicate with workers (see "Required Forms" in Appendix)
- ∞ execute a written agreement between the worker and F/FLC at the time of hiring and prior to the worker performing any work for the contractor containing the terms and conditions of employment as required (both in English and any other language used by the F/FLC to communicate with the worker)
- ∞ furnish to each worker at the time the worker is paid, a written statement itemizing the total amount paid, amount and purpose of each deduction, the hours worked and rate of pay, (or piece rate and number of pieces done if the work is done on a piece rate basis), and information regarding work done under the federal Service Contract Act or related federal or state laws if applicable (see "Appendix: Required Forms")
- ∞ comply with applicable field sanitation and housing health, safety or habitability if applicable
- timely submit to BOLI certified true copies of all payroll records for work done as a farm labor contractor when the contractor pays employees directly. (ORS 658.440)

Payment of Travel, Food and Lodging Expenses Requirements

If an F/FLC recruits or solicits workers to travel from one place to another prior to work being available, the contractor must furnish lodging and an adequate supply of food to workers at no charge until employment begins.

If employment does not begin within 30 days from the date the contractor represented work would be available, the contractor must refund to workers all sums paid by workers to the contractor and provide the costs of transportation, including meals and lodging in transit, to return workers to the place from where the workers were induced to travel (or the costs of transportation, meals, and lodging in transit to another worksite selected by the workers, whichever is less). (ORS 658.440)

Prohibited Activities

F/FLCs are prohibited from the following:

- ∅ Making misrepresentations, false statements or willful concealments in applying for a license
- ∅ Willfully making or causing to be made to any person any false, fraudulent or misleading representation, or publishing or circulating any false, fraudulent or misleading information concerning the terms, conditions or existence of employment at any place or by any person
- ∅ Soliciting or inducing (or causing to be solicited or induced) violations of existing employment contracts
- ∅ Knowingly employing aliens not legally present or employable in the United States
- ∅ Assisting an unlicensed person to act in violation of the F/FLC laws
- ∅ Forcing, intimidating, threatening dismissal or deportation, or inducing in any other manner an employee to give up any part of the compensation to which an employee is entitled under the employee's employment contract or state or federal wage laws
- ∅ Soliciting or inducing (or causing to be solicited or induced) the travel of a worker from one place to another by representing to a worker that employment is available when employment is not available within 30 days of the date work was represented as being available
- ∅ Discharging or discriminating in any other manner against an employee because the employee has made a wage claim against the F/FLC or employer; caused to be instituted or participated in any proceedings under or related to the Farm Labor Contractor Law; or discussed or consulted with anyone concerning the employee's rights under the Farm Labor Contractor Law

(ORS 658.440; ORS 658.452)

Civil Penalties for Violations of the F/FLC Law

In addition to other penalties provided by law, BOLI may assess a civil penalty of up to \$2,000 for each violation of the F/FLC law including the following:

- ∅ Recruiting, soliciting, supplying or employing a worker without a F/FLC license or without the required license indorsement
- ∅ Failing to carry, display or provide a copy of the contractor's license or temporary permit to the person to whom workers are to be provided
- ∅ Failing to post a notice in English and in any other language used to communicate with workers that the contractor has a bond or deposit and where claims can be made against the bond or deposit
- ∅ Failing to comply with contracts or agreements entered into as a contractor
- ∅ Failing to furnish each worker at the time of hiring, recruiting, soliciting or supplying a written statement containing the terms and conditions of employment as required
- ∅ Failing to execute a written agreement between the worker and the F/FLC containing the terms and conditions of employment at the time of hiring and prior to the worker performing work for the F/FLC
- ∅ Failing to provide required itemized deduction statements
- ∅ Making misrepresentations, false statements or willful concealments on the license application
- ∅ Willfully making false, fraudulent or misleading information concerning the terms, conditions and existence of employment
- ∅ Knowingly employing an alien not legally employable or present in the United States
- ∅ Failing to provide certified payroll records to BOLI (except for "exempt" contractors)
- ∅ Failing to provide workers' compensation insurance
- ∅ Inducing in any manner an employee or subcontractor to give up any part of the employee's or subcontractor's compensation to which they are entitled under an employment contract or state or federal wage laws
- ∅ Unlawfully discharging or discriminating against an employee
- ∅ Assisting an unlicensed farm labor contractor

(ORS 658.453; OAR 839-015-0508)

Revocation, Suspension or Refusal to Renew License

BOLI is authorized to revoke, suspend or refuse to renew a license to act as a F/FLC under the following circumstances:

- ∂ the licensee or agent has violated or failed to comply with any provision of the Farm Labor Contractor Law
- ∂ the conditions under which a license was issued have changed or no longer exist
- ∂ the licensee's character, reliability or competence makes the licensee unfit to act as a F/FLC

(ORS 658.445)

Duties of Persons Using Services of F/FLCs

Prior to allowing work to begin on any contract or agreement with a farm labor contractor, the person to whom workers are to be provided or the person's agent is required to do the following:

- ∅ Examine the license or temporary permit of the F/FLC and identify the contractor providing the workers as the same individual whose photo appears on the license or temporary permit;
and
- ∅ Retain a copy of the license or temporary permit provided by the F/FLC

(ORS 658.437; OAR 839-015-0509)

Liability of Person Using Services of Unlicensed F/FLC

Any person who knowingly uses the services of an unlicensed F/FLC is personally, jointly and severally liable with the person acting as an unlicensed contractor for any unpaid wages and other damages as provided by law, including costs and reasonable attorney fees in connection with any actions initiated to recover such amounts. (ORS 658.465; OAR 839-015-0605)

Civil Penalties

In addition to liability for unpaid wages and other damages, persons using the services of an unlicensed F/FLC may be assessed civil penalties of up to \$2000 per violation. (ORS 658.850; OAR 839-015-0508)

Required Forms

All of the forms in this section are included in the Appendix. Most are available in both English and Spanish.

Payroll for Farm/Forest Labor Contractors (WH-141)

F/FLCs are required to submit certified payrolls to BOLI when the contractor pays employees directly. (ORS 658.440(1)(i)) This requirement applies to work done on both public and private contracts land, and applies to both agricultural work and forestation/reforestation work.

Contractors may (but are not required) to use form WH-141 in reporting their payroll, however, the contractor must provide all of the information contained in the form, and the certified statement on the back of the form must be signed and submitted with the contractor's payroll. The certified statement required to be signed certifies the accuracy of the information reported on the payroll, including representations pertaining to the provision of fringe benefits to employees.

The first report is due no later than 35 days from the time the contractor begins work on each contract and must include whatever payrolls the contractor has paid out at the time of the report. The second report is due no later than 35 days following the end of the first 35-day period on each contract, with subsequent payroll reports due at successive 35-day intervals, e.g., 35 days, 70 days, 105 days, 140 days, etc. from the time the contractor begins work on the contract and must include whatever payrolls have been issued as of the time of the report.

Contractors who have recruited, solicited or supplied workers from the state of Oregon on contracts located outside the State of Oregon must also file certified payroll reports.

Rights of Workers (WH-151 and WH-151S)

F/FLCs are required to furnish each worker, at the time of hiring, recruiting, soliciting or supplying, whichever occurs first, a written statement in English and any other language used by the farm labor contractor to communicate with the worker, summarizing the worker's rights and remedies under various laws. (658.440(1)(f); OAR 839-015-0310; OAR 839-015-0360) The statement is required to contain a description of:

- ∅ The method of computing the rate of compensation.
- ∅ The terms and conditions of any bonus offered, including the manner of determining when the bonus is earned.
- ∅ The terms and conditions of any loan made to the worker.
- ∅ The conditions of any housing, health and child care services to be provided.
- ∅ The terms and conditions of employment, including the approximate length of season or period of employment and the approximate starting and ending dates thereof.
- ∅ The terms and conditions under which the worker is furnished clothing or equipment.
- ∅ The name and address of the owner of all operations where the worker will be working as a result of being recruited, solicited, supplied or employed by the farm labor contractor.
- ∅ The existence of a labor dispute at the worksite.
- ∅ The worker's rights and remedies under ORS chapters 654 and 656, ORS 658.405 to 658.503, the Service Contract Act (41 U.S.C. 351-401) and any other such law specified by the Commissioner of the Bureau of Labor and Industries, in plain and simple language in a form specified by the commissioner.

Form WH-151 may (but is not required to) be used to provide this information. If a contractor prefers to use the contractor's own forms, all of the information in form WH-151 must be included.

F/FLC renewal applicants are required to submit the form they use for this purpose when renewing their license. (OAR 839-015-0360(3))

Written notification of any changes in the terms and conditions of employment must be provided any time any of the elements listed in the original statement change. With the exception of notice of pay decreases, if it is not feasible to provide written notice at the time changes to the terms and conditions of employment are made, written notice of such changes may be made as soon as practicable. (OAR 839-015-0360(5) and (6))

Written notice of pay decreases must be provided either prior to or at the time such decrease is implemented. (OAR 839-015-0360(7))

F/FLCs must provide information relating to changes in work locations (i.e., the name(s) and address(es) of the owner(s) of operations where workers are employed) no later than the next regularly scheduled payday following a change in location of work. This information may be provided in writing in an amended form WH-151 (or equivalent), by notifying BOLI in writing, or by providing this information on any documents issued to workers (such as picking tickets or itemized deduction statements). (OAR 839-015-0360(8))

Agreement Between Contractor and Worker (WH-153)

At the time of hiring and prior to the worker performing any work for the farm labor contractor, F/FLCs are required to execute a written agreement with each worker containing the terms and conditions described in form WH-153 (Agreement Between Contractor and Worker). (ORS 658.440(1)(g)) The written agreement is required to be in English as well as any other language used by the F/FLC to communicate with the worker. (ORS 658.440(1)(f); OAR 839-015-0360(4))

Agreements Between Farm Labor Contractor and Farmers and/or Owners/Lessees of Land (WH-152)

Farm Labor Contractors are required to file information relating to their agreements with farmers with BOLI by April 30 of each year. (OAR 839-015-0350) Form WH-152 may (but is not required to) be used to comply with this rule. F/FLCs may use any form for filing the information required so long as it contains all the elements of this form. Amended or updated information may be filed at any time. Contractors who conduct **forest** labor contractor activities exclusively (and do no **farm** labor contracting) are required to submit this form. There is a box to check on the form if you perform exclusively reforestation activities.

Statement of Earnings (WH-154)

F/FLCs are required to furnish to each worker each time the worker receives a compensation payment from the farm labor contractor, a written statement including the following information:

- the total gross payment being made
- the amount and purpose of each deduction from the gross payment
- the total number of hours worked during the time covered by the gross payment
- the rate of pay
- if the worker is paid on a piece rate, the number of pieces done and the rate of pay per piece done
- the net amount paid after any deductions
- the employer's name, address and telephone number
- the pay period for which the payment is made
- If the worker is being paid for work done under any law which requires the payment of a prevailing rate of wage (such as the Federal Service Contract Act, Davis-Bacon Act or state prevailing wage law), a written statement specifying the amount of the prevailing wage rate required to be paid. (ORS 658.440(1)(h) and OAR 839-015-0370)

F/FLCs may (but are not required to) use form WH-154 which contains all the elements required by, and can be used to comply with, this rule. Farm and forest labor contractors may use any form for furnishing this information to workers so long as it contains all the elements of form WH-154.

Posting and Recordkeeping Requirements

Notice of Compliance with Bond Requirements (WH-155)

F/FLCs are required to post a Notice of Compliance with Bond Requirements on the job site in a language which is used to communicate with the workers. (ORS 658.415(15)) Form WH-155 may (but is not required to) be used for this purpose.

State and federal laws require employers to post minimum wage posters. (See “Required Forms” in Appendix.)

In addition to these requirements under the Farm Labor Contractor Law, there are several other posting requirements under various state and federal laws. For more information, see http://oregon.gov/BOLI/CRD/C_Postings.shtml or contact the Technical Assistance for Employers Unit of the Bureau of Labor and Industries at (971) 673-0824.

Recordkeeping requirements

F/FLCs are required to keep and preserve all records necessary to determine their compliance with the farm labor contracting laws for a period of three years. This requires preserving all workers’ names, addresses, and individual payroll records; copies of each work agreement executed by each worker; and all written agreements between the contractor and farmer. Additional recordkeeping requirements are found in OAR 839-015-0400.

F/FLCs are required to make these records available for inspection to representatives of the Bureau of Labor and Industries upon request. OAR 839-015-0410.

In addition to the recordkeeping requirements in the Farm Labor Contractor Law, state and federal wage and hour laws require that employers and maintain certain time and payroll records (see page 39).

What is a Farmworker Camp?

A farm worker camp is defined as any place or area of land where there are sleeping places for workers provided by a farmer, farm labor contractor, employer, or other person in connection with the recruitment or employment of workers to work in the production and harvesting of farm crops or in the reforestation of lands.

Oregon law expressly excludes from the definition of a farm worker camp:

- A single, isolated dwelling unit occupied solely by members of the same family, or by five or fewer unrelated individuals, or
- A hotel or motel which provides housing with the same characteristics on a commercial basis to the general public on the same terms and conditions as housing is provided to such workers.

(ORS 658.705)

Who is a Farmworker Camp Operator?

A farmworker camp operator is a person who, as a practical matter, exercises the ultimate right to determine terms and conditions of occupancy of a farm worker camp and who controls its maintenance and operation. Such a person is required to have a farm labor contractor license with an indorsement to operate the farm worker camp unless the operator is otherwise exempted from the licensing requirements.

Farmworker camp operators are not required to be licensed if the operator has a substantial ownership interest (at least 30%) in the real property on which the camp is located; or has any form of ownership interest in the business organization that operates the camp; or is related by blood or marriage to a person with such interests provided:

- a) the property on which the camp is located is subject to a special farm use assessment under law; and
- b) the business organization which operates the camp filed a tax return reporting farm activity.

Permanent employees of a farmworker camp operator are not required to obtain a farmworker camp operator indorsement, provided they have no financial interest in the camp or the business other than the wages paid to the employee.

(ORS 658.715)

REQUIREMENTS OF FARMWORKER CAMP OPERATORS

Licensing and Registration Requirements

Persons who operate farmworker camps, unless exempt, must be licensed as a Farm Labor Contractor and obtain a camp operator's indorsement to the Farm Labor Contractor license. In addition to the applicable Farm Labor Contractor license fee, there is an additional application fee of \$50 for a camp operator's indorsement to the license.

Farm/forest labor contractors who operate farmworker camps and are required to have a camp operator license indorsement must provide proof of financial responsibility for no less than \$15,000, regardless of the number of employees employed. Under certain circumstances, as a condition of indorsement, the commissioner may require the farmworker camp operator to submit proof of financial ability in an amount up to three times that ordinarily required of an indorsee applicant.

In addition to the Farm Labor Contractor license exam, applicants for a farmworker camp operator's indorsement, must take and pass an additional exam relating to Farmworker Camp Operator regulations.

Farmworker camp operators are required to register each farmworker camp operated by the operator with the Department of Consumer and Business Services.

(ORS 658.715; ORS 658.735; ORS 658.750)

Farmworker Camp Operator Duties and Prohibitions

Farmworker camp operators are required to comply with the following laws and regulations:

- Farm Labor Contractor
- Occupational Safety and Health
- Applicable building codes and health and safety laws
- Unlawful employment discrimination provisions

Farmworker camp operators are also required to:

- Pay or distribute promptly when due all money or other things of value entrusted to the farmworker camp operator
- Comply with the terms and provisions of all legal and valid agreements or contracts entered into

Farmworker camp operators are prohibited from:

- Operating a camp which is not registered with the Department of Consumer and Business Services
- Making misrepresentations, false statements or willful concealments in the application for a license/indorsement or registration
- Willfully making or causing to be made any false, fraudulent or misleading representations concerning the terms and conditions of occupancy in the farmworker camp
- Knowingly publishing or circulating false or misleading information concerning the terms, conditions or existence of housing or employment at any place
- Assisting a person who is not entitled to operate a farmworker camp to act in violation of the law
- By force, intimidation or threat in any manner whatsoever, inducing any occupant of a farmworker camp to give up any part of the compensation to which the occupant is entitled by contract or by an state or federal wage payment law
- By force, intimidation or threat in any manner whatsoever, restraining any person who wishes to leave the camp from doing so
- Discharging, evicting or otherwise discriminating against any person because the person has made a claim for compensation or initiated an action relating to unlawful employment discrimination or occupational safety and health provisions; has testified or is about to testify in any such proceedings; or has discussed or consulted with anyone concerning the occupant's rights under the farm labor contractor or farmworker camp laws.

(ORS 658.755; 658.760)

Requirements of Farmworker Camp Operator in Case of Vacation of Camp

If any government agency authorized to enforce building, health or safety standards orders a camp vacated because the camp is not habitable, the camp operator is required to provide lodging, without charge, that meets the health and safety standards of the Department of Consumer and Business Services for seven days or until the camp is made habitable, whichever is less. (These provisions do not apply if the Department of Consumer and Business Services determines that the cause of the camp's closure was beyond the control of the camp operator.) (ORS 658.790)

Required Postings

Farmworker camp operators are required to conspicuously post a copy of the camp operator's Farm Labor Contractor's license with farmworker camp operator indorsement in an exterior area of the camp that is open to all employees and in a manner easily visible to the occupants of and to the visitors of the camp. In addition, farmworker camp operators are required to keep conspicuously posted a notice specifying the indorsee's compliance with the requirement to provide proof of financial responsibility, specifically required information about the bond or deposit, and the name and Oregon address of the surety on the bond or a notice that a deposit in lieu of the bond has been made with the commissioner, together with the address of the commissioner.

Farmworker camp operators are also required to post a notice on a form provided by the Department of Consumer and Business Services in an area of the farmworker camp frequented by the occupants with the following information

- The name and address of the camp operator
- The address and phone number of the Department of Consumer and Business Services
- A statement that inquiries regarding health and sanitation matters or the terms and conditions of occupancy may be made to the Department of Consumer and Business Services
- A statement that the farmworker camp is registered with the Department of Consumer and Business Services

This notice must be published in English and any other languages used to communicate with occupants of the farmworker camp.

(ORS 658.717; 658.730; OAR 839-014-0350)

Required Records

In addition to the recordkeeping requirements of the Farm Labor Contractor and Wage and Hour Laws (see pages 23 and 39), farmworker camp operators are required to make and maintain the following records for a period of three years:

- The name and permanent home mailing address of each resident of the farmworker camp
- The dates each resident resided in the camp
- Records of financial transactions between the operator and the residents
- Records of any inspection or citations of the camp issued by an agency of government responsible for health, safety or sanitation inspections, and correspondence with any such agency
- Notices posted at the camp to comply with the Farmworker Camp Operator regulations
- Any notices and rules for access to an operating telephone

Right of Access to Employer-Owned Housing

Oregon law prohibits employers from restricting access by authorized persons or invited persons to employees residing in housing owned, rented or in any manner controlled by the employer where employees are residing. These laws apply to farm-worker camps.

"Authorized persons" are government officials, medical doctors, certified education providers, county health care officials, representatives of religious organizations, or any other providers of services for farm-workers funded in whole or in part by the state, federal, or local government (Legal Aid Services of Oregon or Oregon Law Center employees, for example).

Authorized persons or invited guests must announce their presence on the premises upon request. Authorized persons shall also, upon request, provide credentials identifying the person as representing a qualifying agency or organization.

"Invited persons" include persons invited to a dwelling unit by an employee or a member of the employee's family residing with the employee.

An invited person need not disclose to the employer the name of the employee who issued the invitation prior to gaining access to the housing, but an invited person must do so in order to assert a right to access as an invited person in any judicial proceeding concerning the right to access provided in the law. If an invited person does not disclose the name of the inviter to the employer, the employer may deny access until the invited person obtains a court order.

Interference with these persons may result in both civil and criminal sanctions under state and federal laws.

(ORS 659A.250 to 659A.262)

Access to Telephone Requirements

Employers who own or control their employees' housing must ensure that employees occupying the housing have reasonable access to an operating telephone at all times for emergency use. The telephone may be a pay telephone. The employer must allow employees access to a telephone for emergency use at the request of the employee.

Employers are also required to provide a telephone for the private use of the employees. The telephone must be located within two-miles by road or foot of the farmworker housing.

When the telephone designated by the employer for personal use of the employees is located in the employer's residence or place of business, the employer may establish reasonable rules for the private use of the telephone by the employees. Any such rules must be posted in a conspicuous place where all occupants can easily view them in English and any language used by the employer to communicate with the employees.

An employer may request a waiver from the requirements to provide telephone access if to do so would constitute an "unreasonable hardship" for the employer.

(ORS 659A.253)

Penalties

In addition to any other penalty provided by law, the commissioner of the Bureau of Labor and Industries may assess a civil penalty of up to \$2,000 for violations of the provisions of the Farmworker Camp Law:

Violations of many of the Farm Labor Contractor and Farmworker Camp laws are also punishable as misdemeanors. Some violations of the law are punishable as felonies if the person has previously been convicted of violating certain provisions of the law; if the person's license has been suspended, revoked or denied; or if the person is acting in violation of an outstanding order of the court in connection with previous violations of the Farm Labor Contractor or Farmworker Camp laws.

The commissioner of the Bureau of Labor and Industries may deny, refuse to issue or renew, suspend or revoke a license indorsement for violations of the law.

If the bureau finds there is a serious danger to the public health or safety, it may immediately suspend or refuse to renew a license indorsement.

(ORS 658.785; 658.850; 658.991)

SUMMARY OF SELECT WAGE AND HOUR LAWS

The following information is intended only as a summary of select wage and hour laws of which every employer should be aware before hiring employees: It is not a complete summary of wage and hour laws. All the wage and hour laws discussed in this section are applicable to farm labor contractors *in addition to* the specific obligations of a farm labor contractor discussed elsewhere in this handbook.

Minimum Wage

Unless exempt, all employees are entitled to receive the applicable minimum wage rate for all hours worked. The hourly minimum wage is adjusted each year by the Bureau of Labor and Industries based on increases in the Consumer Price Index of the previous year. An employer must make sure as of January 1 of each year that all employees are currently earning at least the hourly minimum wage applicable to that year.

Unless exempt, agricultural workers must receive at least the equivalent of the hourly minimum wage even if they are paid on a piece-rate basis. If the agreed upon piece-rate produces a rate of pay higher than the hourly minimum wage, then the worker is entitled to receive the higher amount.

Exemptions from Minimum Wage

Agricultural workers are exempt from minimum wage if the individual is:

- a hand harvest or pruning laborer paid a piece-rate and is employed by an employer who did not use over 500 piece-rate work days of agricultural labor in any calendar quarter of the previous year*;
- the parent, spouse, child or other member of the employer's immediate family;
- a hand harvest or pruning laborer who commutes daily from the individual's permanent residence to the farm and has been employed in agricultural labor fewer than 13 weeks the previous calendar year;
- 16 years of age or under and is employed as a hand harvest laborer paid the same piece-rate as employees over 16 years of age; or
- principally engaged in the range production of livestock, earns a salary, and is paid on a salary basis.

*"Piece-rate workday" is defined as any day during which an employee performs any agricultural labor on a piece-rate basis for not less than one hour. If the employer is a farm labor contractor, the combined total of all piece-rate workdays of workers employed at each individual farm where the farm labor contractor provided labor in the same quarter of the previous year will determine the number of piece-rate workdays employed by the farm labor contractor and the contractor's eligibility for this limited exemption from the obligation to pay workers the hourly minimum wage. (This exemption rarely applies in the case of farm labor contractor employers.)

(ORS 653.020; ORS 653.022; ORS 653.025; OAR 839-020-0010)

Overtime

Most agricultural workers are exempt from the right to receive time and a half their regular hourly rate for each hour worked over forty hours in a workweek.

The following employees, however, are not exempt from overtime, and must receive time and a half their regular hourly rate when they work over forty hours in a work week:

- Workers engaged in the production or harvesting of Christmas trees;
- Workers employed in forestation, reforestation, and firefighting;
- Workers who collect wild forest products including mushrooms, evergreen boughs, beargrass, yew bark, salal, or ferns; and
- Workers employed on a farm handling agricultural products produced on another farm. For example, a farm may operate a transportation service that also ships produce raised on neighboring farms or a fresh market sales operation that sells some produce not actually produced on the farm. Whenever a worker handles agricultural products produced on a farm other than the farm on which the worker is actually working, the worker is no longer considered to be employed in “agriculture,” and is entitled to be paid overtime.

(ORS 653.261; OAR 839-020-0004(4); OAR 839-020-0135)

Deductions from Wages

It is lawful to make deductions from wages only under the following circumstances:

- The employer is required to do so by law (Examples: Federal and state taxes, social security, or a garnishment order);
- The employee has voluntarily signed an authorization for the deduction, the deduction is for the employee’s benefit and is recorded in the employer’s books (Examples: Goods or services purchased from the employer for the employee’s benefit, group health insurance premiums, cash loans made to employees for their own benefit);
- The employee has voluntarily signed an authorization for a deduction for any other item, provided that the ultimate recipient of the money withheld is not the employer, and the deduction is recorded in the employer’s books;
- The deduction is made in accordance with a collective bargaining agreement to which the employer and employee are parties (Example: Union dues);
- The deduction is from the employee’s final paycheck for the repayment of money loaned to the employee under certain circumstances.

When an employer deducts an amount from an employee’s wages as required or authorized by law or agreement, the employer is required to pay the amount deducted to the appropriate recipient within the time required by the law or by the agreement. If there is no time specified, the employer must pay the amount within seven days after the date the wages from which the deductions are made are due.

Deductions from Wages - Continued

Note that some deductions are not permitted at all, even when the employer has obtained the worker's written consent. For example, deductions may **not** be made from the wages of employees for the following items:

- Uniforms, tools, and transportation that are required to do the job (or “draws” for the purchase of such items)
- Deposits for equipment, shortages, breakages, losses, or theft
- Meals and lodging if they are required by the employer

An employee may be required to pay for these items (so long as a deduction is not made from the employee's wages) if the amount paid by the employee does not have the effect of reducing the employee's earnings below the applicable wage rate (i.e., state minimum wage, federal minimum wage, Service Contract Act, or Migrant and Seasonal Agricultural Worker Protection Act wage rate) for all hours worked and the requirement to pay for such items is disclosed in advance to the employee.

Payroll deductions may be made for items such as raingear, gloves and hats, meals and lodging **ONLY** if they are not required, are for the private benefit of the employee, and are authorized in writing by the employee and recorded in the employer's books. Lodging or other facilities or services are considered to be required by the employer and may therefore *not* be deducted when:

- Acceptance of the lodging or other facilities or services is a condition of the employee's employment;
- The expense is incurred by an employee who must travel away from the employee's home on the employer's business;
- The acceptance of the lodging or other facilities or services is involuntary or coerced; or
- The provision of lodging or other facilities or services is necessary in order for the employer to maintain an adequate work force at the times and locations the employer needs them.

(ORS 652.610; ORS OAR 839-020-0020; OAR 839-020-0025)

Paydays and Paychecks

Every employer must establish and maintain a regular payday. Under state law paydays must be scheduled at least every 35 days. (However, federal law requires agricultural employers to have a regularly scheduled payday at least every two weeks for migrant and seasonal agricultural workers.)

Employers must furnish each employee, each time the employee is paid, a written itemized statement of earnings. The written itemized statement must include:

- The total gross payment being made;
- The amount and a brief description of each and every deduction from the gross payment;
- The total number of hours worked during the time covered by the gross payment;
- The rate of pay;

Paydays and Paychecks - Continued

- If multiple rates of pay are paid, the total number of hours worked at each rate of pay;
- If the worker is paid on a piece rate, the number of pieces done and the rate of pay per piece done;
- The net amount paid after any deductions;
- The employer's name, address, and telephone number;
- The pay period for which the payment is made.

An employee's wages may be paid through a direct deposit systems, automated teller machine card, payroll card or other means of electronic transfer, if this is mutually agreeable to the employer and employee, and the employee is able to make an initial withdrawal of the entire amount of net pay due without cost to the employee. An employee is entitled to revoke any agreement to receive wages by means of an electronic transfer by giving written notice to the employer. The revocation is effective 30 days after the employer receives the written revocation.

However, the requirements of the law with regard to revoking an agreement to receive wages by means of an electronic transfer is different with regard to seasonal farm workers and workers employed in packing, canning, freezing, or drying of agricultural crops. These workers may give the employer notice of revocation of the agreement *either orally or by written notice*, and the revocation is effective *ten* days after the employer receives the notice.

When an employer has notice that an employee has not been paid the full amount the employee is owed on a regular payday and there is no dispute between the employer and the employee regarding the amount of the unpaid wages, if the unpaid amount is five percent or more of the employee's gross wages due on the regular payday, the employer must pay the employee the unpaid amount within three days after the employer has notice of the unpaid amount, excluding Saturdays, Sundays and holidays. (However, to comply with *final* pay requirements, see below.)

(ORS 652.120; OAR 839-020-0012)

Final Paychecks

- Seasonal agricultural/forest workers are entitled to receive their last paycheck on their last day of work in the event the employer terminates their employment. The employer of a seasonal agricultural/forestry worker is NOT permitted to wait until the next regularly scheduled payday to provide the final paycheck to an employee whom the employer has terminated.
- So long as the seasonal agricultural/forestry worker gives a 48 hour notice before voluntarily ending employment, the employer MUST give the employee the employee's final paycheck on the employee's last day of employment.
- If the seasonal agricultural/forestry worker voluntarily quits employment without giving the employer a prior 48-hour notice then the employer is required to pay the employee the employee's final paycheck within 48 hours or at the next regularly scheduled payday after the employee has quit, whichever event occurs first.

(ORS 652.140; ORS 652.145)

Meal and Rest Periods

All employees, including agricultural workers not exempt from minimum wage, must be provided meal and rest periods.

At the time of publication of this edition of the Farm/Forest Labor Contractor Handbook, the Commissioner of the Bureau of Labor and Industries is in the process of revising the meal and rest period regulation found at OAR 839-020-0050. The revised meal and rest period rule is scheduled to be published and in effect sometime in January of 2009. Please access the BOLI website at www.oregon.gov/boli or call one of the BOLI offices to obtain a copy of the revised rule which will be applicable for 2009.

The final rule will still require meal periods for agricultural workers within any work period that is at least six hours long, with limited exceptions when there are unanticipated adverse weather conditions. Agricultural workers will also be entitled to a ten-minute paid rest break approximately in the middle of every four hour segment of work or major part thereof. Meal periods and rest breaks may not be combined. They must be taken separately.

The chart on the next page shows the number of rest and meal periods to which workers are entitled, depending on the length of the work period.

REST BREAK & MEAL PERIOD ENTITLEMENTS

To determine the number of hours in the “work period,” count the number of hours between the time the employee begins work and the time the employee ends work (including rest periods), but *exclude* meal periods in which the employee is relieved of duty.

Length of work period	Number of rest breaks required	Number of meal periods required
2 hrs or less	0	0
2 hrs, 1 min – 5 hrs, 59 mins	1	0
6 hrs	1	1
6 hrs, 1min -10 hrs	2	1
10 hrs, 1min-13 hrs, 59 mins	3	1
14 hrs	3	2
14 hrs, 1min – 18 hrs	4	2
18 hrs, 1min – 21 hrs, 59 mins	5	2
22 hrs	5	3
22 hrs, 1 min – 24 hrs	6	3

Rest Breaks: 10 minutes, paid (15 minutes for minors)

Meal Period: 30 minutes, unpaid

Recordkeeping

Employers are required to keep the following records for a period of at least two years (F/FLC's are required to keep and preserve all records for a period of 3 years. See page 23):

- Each employee's name, social security number, address, and employment position. If the employee is under 19 years of age, the employer must also record the birthdate.
- The hours worked each day by each employee and the total hours each employee worked in each workweek.
- A record indicating the time of day and day of week when the employee's workweek begins.
- The basis on which the wages are paid, including the regular rate of pay, the amount and nature of each payment excluded from the regular rate of pay, total daily or weekly straight-time earnings, total daily or weekly overtime earnings, total additions to or deductions from the employee's wages for each pay period, total wages paid each pay period, and the date of each payment and the pay period covered by each payment.

Employers must make these records available to the Commissioner of the Bureau of Labor and Industries upon request.

(ORS 653.045)

Employer Liability For Violations of Wage and Hour Laws

An employer's failure to comply with wage and hour laws may subject the employer to civil penalties, penalty wages that may amount to up to 30 days of extra wages for the employee, and sometimes attorney fees. In order to avoid the risk of substantial liability, employers should always take special care to timely pay the agreed hourly rate for each and every hour the employee worked. The employer should also always timely pay all overtime due to an eligible employee and make sure to timely pay an employee's final wages when due.

(ORS 653.055; ORS 652.150; ORS 653.256; ORS 652.900)

Employer Liability for Issuance of Dishonored Check in Payment of Wages

Pursuant to ORS 30.701, an employer that issues a dishonored check to an employee for payment of wages due is liable to the employee for damages in an amount equal to \$100 or triple the amount for which the check is drawn, whichever is greater, in addition to the amount for which the check was drawn. The amount of damages may not exceed the amount for which the check was drawn by more than \$500. The Commissioner of the Bureau of Labor and Industries may assess a civil penalty payable to the employee in an amount equal to the statutory damages provided by ORS 30.701 against an employer that issues a dishonored check to an employee for payment of wages due.

(OR Laws 2011 CH. 238 § 2; OAR 839-001-0300)

FREQUENTLY ASKED QUESTIONS

Why do I have to pay time and a half for all hours worked over forty in a workweek to my workers who cultivate, trim, or harvest Christmas trees, but I do not have to pay overtime to my workers who pick berries?

Under wage and hour laws, the cultivation and harvesting of Christmas trees, unlike berry production, is not considered “agriculture” despite the fact that Oregon law requires a farm labor contractor’s license in order to recruit, solicit, supply, or employ workers to perform labor for another in the cultivation and harvesting of Christmas trees. Therefore, workers who handle Christmas trees must receive time and a half their regular hourly rate for all hours worked over forty in a workweek.

Do I have to pay overtime to my workers who harvest wild forest products like evergreen boughs, salal, bear grass, yew bark, and ferns?

Yes. Since the mere harvesting of wild forest products is not considered “agriculture” the workers who are employed to collect these forest products are entitled to overtime for all hours worked over forty in a workweek. Note: Workers harvesting other wild forest products such as mushrooms or moss, which are not regulated by Oregon’s farm/forest contractor laws, must also receive overtime for all hours worked over forty in a workweek.

I pay my workers a piece-rate. Sometimes family members request to work together on one “ticket.” Is that all right?

No. Wage and hour laws require that you keep accurate records of hours worked and wages earned by *each* employee. In addition, the employer must furnish *each* employee each time an employee is paid an itemized statement that must include a statement of earnings and deductions for that particular employee. Note: If you permit an employee’s relative or friend to assist your employee in the workplace, then under wage and hour law, you have “suffered or permitted” that person to work and that person will also be considered your employee even though you may believe you did not “hire” the extra help.

Sometimes I pay my workers by the number of boxes they fill and sometimes I pay them by the pound. Do I still have to keep track of the hours that they work?

Yes. Unless the employee is exempt from minimum wage (see page 33), wage and hour law requires that you keep a record of the hours worked each day by each employee. Recording the hours worked by each employee daily is required regardless of the method used to compute the wages actually earned pursuant to the agreed rate of pay. An employer should always check to make sure that the hours the employee actually works reflect earnings at least equal to the minimum hourly wage regardless of the method used to compute wages earned by the employee pursuant to the agreed rate. If an employee’s earnings do not equal or exceed what they would have earned for all hours worked multiplied by the applicable minimum wage, the employer must pay the difference between these amounts.

STATE AND FEDERAL LAWS REGULATING THE EMPLOYMENT OF MINORS IN AGRICULTURE

The state and federal child labor laws pose different requirements for different age groups of minors working in agriculture. Where state and federal laws address the same issue, the stricter standard applies. The following is a summary of some of the provisions of state and federal regulations pertaining to the employment of minors in agriculture. For more information, contact the U.S. Department of Labor, Wage and Hour Division at (503) 326-3057 or Bureau of Labor and Industries, Wage and Hour Division at (971) 673-0836.

Definition of Agriculture

Agriculture includes farming in all its branches when performed by a farmer or on a farm as an incident to or in conjunction with such farming operations. If the employee of a grower or processor handles goods grown by another farmer, they may no longer meet the definition of agriculture and might lose any agricultural exemptions under the law for that workweek.

Minimum Age Requirements

Minors age 16 and above may work at any time in jobs not declared hazardous by the Secretary of Labor (U.S.).

Minors ages 14 and 15 may work outside school hours in jobs not declared hazardous by the Secretary of Labor (U.S.). (See "PROHIBITED WORK" on page 43.)

Minors ages 12 and 13 may work in jobs not declared hazardous outside school hours either with written parental consent or on the same farm where their parents are employed.

Minors ages 9 through 11 may pick berries and beans outside school hours if the child has the written consent of his/her parents or guardians. The produce must be sold within the state AND the produce is not transported outside the state in any form. The container must be distinctly marked so as to prevent the product from entering interstate commerce. The individuals paid at the same rate as other employees of the employer who are 12 years or older and are engaged in picking beans or berries.

Local minors ages 10 and 11 may hand harvest short-season crops outside school hours for no more than 8 weeks between June 1 and October 15 IF their employers have obtained special waivers from the Secretary of Labor (U.S.).

Minors of any age may work in any job on a farm owned or operated by their parents.

Hours Limitations for Minors Under 16

Minors under age 16 may not work while school is in session. A maximum of three hours/day may be worked on school days; 10 hours/day on non-school days; and a maximum of 25 hours/week may be worked during school weeks. During the summer months or other school vacation periods of one week or more, a maximum of 10 hours/day and 60 hours/week may be worked unless a special permit is first obtained from the Wage and Hour Commission*. No more than six days/week may be worked.

Minors under age 16 employed to operate, assist in the operation of or ride in or on power-driven farm machinery may work a maximum of eight hours/day on non-school days; and 18 hours/week during school weeks. During the harvest season (summer months), a maximum of 10 hours/day and 60 hours/week may be worked unless a special permit is first obtained from the Wage and Hour Commission*. Outside the harvest season, a maximum of 44 hours/week is allowed without an emergency overtime permit.

There is no restriction on starting and quitting times for minors employed in agriculture, so long as the minor does not work when school is in session.

Hours Limitations for Minors Over 16

Minors 16 and 17 years of age who are employed to operate, assist in the operation of or ride in or on power-driven farm machinery may work a maximum of 25 hours/week during school weeks and 60 hours/week during the harvest season unless a special permit is first obtained from the Wage and Hour Commission*.

*Emergency and special overtime permits may be obtained by applying to the Wage and Hour Commission in care of the Bureau of Labor and Industries.

Prohibited Work

Minors under 16 may not be employed in feed mills, flour mills, grain warehouses, or any workplace where power-driven machinery is used in or incidental to adapting articles or goods for sale. No minor under age 18 may be employed to operate or assist in the operation of power-driven machinery, however, under certain circumstances, agricultural employers may employ 16 and 17 year olds to operate or assist in the operation of power-driven machinery in an agricultural warehouse. Youths employed on farms owned or operated by their parents may be employed in any occupation. Fourteen and 15 year old student learners enrolled in vocational agricultural programs are exempt from some of the hazardous occupations provisions when certain requirements are met. For a complete listing of prohibited/hazardous occupations or operations or for more information, contact the Bureau of Labor and Industries or U.S. Department of Labor.

Power-Driven Farm Machinery

Minors employed to operate, assist in operating or ride in or on power-driven farm machinery or conveyances connected to power-driven farm machinery must first complete training relating to the safe operation of the machinery. (For more information regarding specific training requirements, contact the Bureau of Labor and Industries.)

Rest and Meal Period Requirements for Minors

Meal periods of at least 30 minutes must be provided no later than five hours and one minute after the minor reports to work. Minors under 16 must be fully relieved of work duties during this time. Sixteen and 17 year-old employees may work during a meal period, but must be paid for their time. (This is permitted only in those cases where the nature of the work prevents the minor from being relieved from all duties.)

Paid rest periods of at least 15 minutes must be provided to minor employees during each four hour period (or major portion) of work time. Rest periods may not be added to the meal period or deducted from the beginning or end of the work period in order to reduce the length of the work period.

Employment Certificates

Employers who employ minors to operate, assist in operating or ride in or on power-driven farm machinery are first required to obtain an annual employment certificate from BOLI. Agricultural employers who do not employ minors to operate power-driven farm machinery are not required to obtain an employment certificate.

Employment certificate applications may be obtained from any BOLI office.

SUMMARY OF SELECT CIVIL RIGHTS LAWS

The following information is intended only as a summary of select civil rights laws which every employer should be aware of before hiring employees: It is not a complete summary of civil rights laws. There are federal, state, county, and city discrimination laws banning discrimination because of an individual's protected classes. For more information on federal and state civil rights laws, go to the "Civil Rights" link on BOLI's website at www.oregon.gov/boli.

Civil Rights laws ban discrimination against individuals because of characteristics that make them part of a protected class. Discrimination is generally defined as the treatment of a person on the basis of something other than personal merit. Discrimination is unlawful when carried out because of an individual's race, color, gender, or other characteristic protected by law.

In order to be protected by Oregon's discrimination laws, employees must be employed by a company with at least one or more employees, except where noted. Protected classes include:

- Race / color
- National origin
- Sex (includes gender, pregnancy and sexual harassment)
- Religion
- Retaliation for opposing an unlawful employment practice
- Association with a member of a protected class
- Age (18 or older)
- Marital status
- Physical/Mental disability (6 or more employees)
- Injured workers (6 or more employees)
- Family relationship
- Sexual Orientation

Race, Color and National Origin Discrimination

State and federal laws prohibit different terms or conditions of employment based on race, color or national origin. An employer may not provide separate facilities, unequal benefits or unequal opportunities because of race, color or national origin.

Sex Discrimination

Oregon law, ORS 659A.030, prohibits discrimination in employment on the basis of sex. Employers with one or more employees are covered by this law. Sex discrimination is prohibited in hiring, compensation, terms or conditions of employment, on-the-job treatment and termination. For example, refusing to hire a woman because of assumptions about the comparative employment characteristics of women in general constitutes sex discrimination, such as assuming that the turnover rate among women is higher than among men. Another example of sex discrimination is terminating employees based on gender stereotypes, such as terminating women employees before male employees on the assumption that men are the primary source of financial support for their families.

Only in rare instances is it permissible to discriminate based upon a protected class such as an individual's gender, and then only when it is compelled by business necessity.

Equal Pay For Equal Work

When members of both sexes perform work that requires equal skill, effort and responsibility, and is performed under similar working conditions, the law requires that they be paid equally. However, different wages may be paid pursuant to a seniority system, a merit system, a system that measures earnings by quality or quantity of production or a differential based on any factor other than sex.

Discrimination Based On Religion

ORS 659A.030 makes it unlawful for any Oregon employer to discriminate against an individual in hiring, termination or any terms and conditions of employment on the basis of religion, unless such discrimination results from a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business. ORS 659A.006(2) excepts bona fide churches or sectarian religious institutions such as schools, hospitals and church camps.

Injured Worker Discrimination

Oregon provides certain rights to employees who are injured on the job. Most Oregon employers are prohibited from discriminating against employees because of such injuries. Also, an employer may not discriminate against a worker because a worker has applied for workers' compensation benefits. (ORS 659A.040)

Discrimination Based On Disability

Federal and state laws protect people with disabilities against discrimination in terms, conditions or privileges of employment. Employers of six or more employees must comply with Oregon's disability law. Employers with 15 or more employees must comply with the federal Americans with Disabilities Act. Employers covered by both state and federal laws (all those with 15 or more employees) must apply the standard most beneficial to the employee.

Discrimination Based on Age

Oregon prohibits an employer from firing, refusing to hire, or discriminating against an individual in compensation, or other terms, conditions or privileges of employment because that person is 18 or older. (ORS 659A.030(1))

Discrimination Based on Family Relationships

Oregon prohibits an employer from discriminating against an individual solely because another member of that individual's family works or has worked for that employer. However, an employer can refuse to hire an individual if the individual's family member would work in a supervisory capacity over the individual. (ORS 659A.309)

Discrimination Based on Sexual Orientation

Oregon prohibits an employer from discriminating against an individual on the basis of an individual's actual or perceived heterosexuality, homosexuality, bisexuality, or gender identity.

Pre-Employment Inquiries of Protected Classes

Federal and state laws prohibit employers from advertising or making any inquiry expressing a preference based on protected class status. Therefore, all pre-employment questions should be designed to obtain information relating only to qualifications for successful job performance.

The following questions should be avoided when considering employing an individual:

- Questions asking for direct information about an individual's race, sex, sexual orientation, age, marital status, etc.
- Questions asking for information typically evaluated differently for men and women, such as questions regarding child care arrangements.
- Questions asking for information that could be used to screen out members of protected classes, such as questions about height or weight.
- Questions asking for information about a person's prior workers' compensation claims.
- Questions asking where a person was born or if the person was born in the United States.
- Questions asking about a person's religious affiliation.